

Testimony on House Bill 91  
Revising Laws Concerning Child Abuse and Neglect  
To Comply with Federal Law

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Division's Mission: Keeping Children Safe and Families Strong

- House Bill has been introduced at the request of the Department of Public Health and Human Services, Child and Family Services Division
- Thanks for Rep. Edith Clark for graciously agreeing to sponsor the bill for the Division
- Congress establishes federal child welfare policy in legislation which incorporates elements of best practice to be adopted by the states.
- The purpose of HB 91 is to bring Title 41, chapter 3 (Montana's Child Abuse/Neglect statute) into compliance with recent changes in federal requirements.
- These federal requirements will have a positive impact on children in the foster care system.
- **Background:**
  - Congress passed, and the President signed into law, legislation which impacts the delivery of and funding for child protective services in Montana.
  - Received notice of one of the federal bills after HB 91 was finalized so the House amended HB 91 to comply with the requirement of that federal law.
  - Re-examined the requirements of a federal grant which Child and Family Services receives and determined that current statute does not comply with one of the requirements of that grant.
  - Proposed statutory changes are to codify the federal requirements into Montana statute.
  - Federal requirements tied to Title IV-E funding and funding under Child Abuse Prevention and Treatment Act grant.

- **Federal references:**

- Safe and Timely Interstate Placement of Foster Children Act of 2006;
- Child Abuse Prevention and Treatment Act (CAPTA); and
- Child and Family Services Improvement Act of 2006.

- **Section-by-section explanation of the proposed changes:**

1. **Section 1—New Section:**

- Allows the court to permit testimony by means other than attending the hearing in person (**pg. 1, lines 13-15**) .
- The companion change to this is deleting language in Section 7 which permits the court to allow testimony by audiovisual/electronic means during the show cause hearing (**pg. 14, line 24**).
- The reason for the new section is so the provision applies to any proceeding conducted under Title 41, chapter 3 (Child abuse/neglect).
- To comply with the Safe and Timely Interstate Placement of Children Act of 2006.

2. **Section 2—41-3-115, Foster Care Review Committee:**

- If a child is placed out of state, requires that the Foster Care Review Committee consider if that placement is appropriate and in the child's best interest (**pg. 2, lines 21-22**).
- Requires that the Foster Care Review Committee consider out-of-state placements for a child who cannot be returned home (**pg. 2, lines 22-23**).
- To comply with the Safe and Timely Interstate Placement of Children Act of 2006.

3. **Section 3—41-3-201, Reports:**

- Requires that professionals (primarily health professionals) who are mandatory reporters must report to the Department if s/he knows an infant is affected by dangerous drugs (**pg. 4, lines 25-27**).
- To comply with CAPTA requirements.

- The House also amended this provision to remove Christian Science practitioners from the specific list of reporters because the Committee had testimony that Christian Science practitioners are clergy and the provisions in 41-3-201(5)(b) specific to clergy apply (**pg. 4, lines 14 and 21**).

**4. Section 4—41-3-205, Confidentiality:**

- Allows courts to share information with other courts (both in Montana and in other states) as is necessary to expedite the interstate placement of children (**pg. 8, lines 12-14**).
- To comply with the Safe and Timely Interstate Placement of Children Act of 2006.

**5. Section 5—41-3-422, Abuse and Neglect Petitions:**

- Changes the “opportunity to be heard” that foster parents, preadoptive parents, and relatives caring for the child currently have during a hearing to a “right to be heard” during the hearing (**pg. 10, line 24**).
- To comply with the Safe and Timely Interstate Placement of Children Act of 2006.

**6. Section 6—41-3-423, Reasonable Efforts Required to Prevent Removal of Child:**

- Requires that in-state and out-of-state placements must be considered during the permanency hearing if the court finds that reasonable efforts to reunite are not necessary (**pg. 13, line 20**).
- Requires that the department must consider an out-of-state placement, if appropriate and if the court determines that continuation of reunification efforts is inconsistent with the permanency plan for the child (**pg. 13, line 26**).
- If the court determines that continuation of reunification efforts is inconsistent with the permanency plan for the child, concurrent planning may include identifying both in-state and out-of-state potential placements (**pg. 13, lines 29-30**).
- To comply with the Safe and Timely Interstate Placement of Children Act of 2006.

7. **Section 8—41-3-445, Permanency hearing:**

- Requires that the court or foster care review committee, when conducting the permanency hearing, must consult with the youth in an age appropriate manner (pg. 16, lines 29-30).
- To comply with the Child and Family Services Improvement Act of 2006.
- Child and Family Services Improvement Act language:

Procedural safeguards shall be applied to assure that in any permanency hearing held with respect to the child, including any hearing regarding the transition plan of the child from foster care to independent living, the court or administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child.

- “Procedural safeguard” is amending the requirement into statute.
- Federal language clearly imposes a requirement that the court (or foster care review committee if the committee is the entity conducting the permanency hearing) consult with the child. This language does not provide for someone other than the court (or the entity conducting the hearing) to do the consultation
- Administration for Children and Families has not provided guidance as to the parameters of this provision; therefore, we believe it is best to closely mirror the federal language.
- HB 91 language closely mirrors the federal language (pg. 16, lines 29-30):

In a permanency hearing, the court or other entity conducting the hearing shall consult, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child.

- Federal language mirrored in HB 91 “shall consult in an age-appropriate manner” implies that the court has the discretion to determine how, exactly, that consultation shall occur.
- This requirement may become an element subject to audit during a federal Title IV-E review and a federal Child and Family Services Review.

8. **New Section—Effective date:** Effective date of July 1, 2007 because federal requirements are currently in effect. On February 22 the Division requested a waiver which will allow until July 1 to implement the provisions which require statutory amendment (**pg. 18, line 25**).

Please vote “do pass” on HB 91

*Public Law 109-288 - Child and Family Services  
Improvement Act of 2006*

(III) by adding at the end the following:

"(B) Service delivery demonstration project.--

"(i) In general.--Subject to clause (ii), for purposes of awarding a cooperative agreement to conduct the service delivery demonstration project authorized under subsection (g), the Secretary shall reserve not more than--

"(I) \$ 5,000,000 of the amount appropriated under paragraph (1) for the first fiscal year in which funds are to be awarded for the agreement;

"(II) \$ 10,000,000 of the amount appropriated under paragraph (1) for the second fiscal year in which funds are to be awarded for the agreement; and

"(III) \$ 15,000,000 of the amount appropriated under paragraph (1) for the third fiscal year in which funds are to be awarded for the agreement.

"(ii) Assurance of funding for general program grants.--With respect to any fiscal year, no funds may be awarded for a cooperative agreement under subsection (g), unless at least \$ 25,000,000 of the amount appropriated under paragraph (1) for that fiscal year is used by the Secretary for making grants under this section for that fiscal year."

**[\*9] SEC. 9. REAUTHORIZATION OF THE COURT IMPROVEMENT PROGRAM.**

Section 438 of the Social Security Act (42 U.S.C. 629h) is amended in each of subsections (c)(1)(A) and (d) by striking "2006" and inserting "2011".

**[\*10] SEC. 10. REQUIREMENT FOR FOSTER CARE PROCEEDING TO INCLUDE, IN AN AGE-APPROPRIATE MANNER, CONSULTATION WITH THE CHILD THAT IS THE SUBJECT OF THE PROCEEDING.**

Section 475(5)(C) of the Social Security Act (42 U.S.C. 675(5)(C)) is amended--

(1) by inserting "(i)" after "with respect to each such child,";

(2) by striking "and procedural safeguards shall also" and inserting "(ii) procedural safeguards shall"; and

(3) by inserting "and (iii) procedural safeguards shall be applied to assure that in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, the court or administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child;" after "parents;".

**[\*11] SEC. 11. TECHNICAL AMENDMENTS.**

(a) Updating of Archaic Language.--

(1) Section 423 of the Social Security Act, as so redesignated by section 6(b)(2) of this Act--

(A) is amended by striking "per centum" and inserting "percent"; and

(B) by striking "He" and inserting "The Secretary".

(2) Section 424(a) of such Act, as so redesignated by section 6(b)(2) of this Act, is amended by